

RECENT CHANGES IN LAWS RELATING TO WOMEN

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empowered women enslaved



A
LAWYERS COLLECTIVE
PUBLICATION



COMMUNITY HEALTH CELL

47/1 St. Mark's Road, Bangalore – 560 001

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CONTENTS

PART - I

1. Law relating to rape.
2. Law relating to cruelty against women.
3. Law relating to Dowry Prohibition.
4. Family Courts Act.
5. Irretrievable breakdown of marriage as a ground of divorce.

PART - II

1. Criminal Law (Amendment Act) 1983.
2. Criminal Law (Second Amendment Act) 1983.
3. Dowry Prohibition Act 1961 as amended by Dowry Prohibition (Amendment Act) 1984.
4. Family Courts Act 1984.

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PREFACE

During the years 1983-85, far reaching changes have been made in the laws relating to women. In this publication, we bring together the Criminal Law (Amendment Act) 1983, the Criminal Law (Second Amendment Act) 1983, the Dowry Prohibition (Amendment Act) 1984, and the Family Courts Act 1984. On the date of publication, the Family Courts Act 1984 has not been brought into force.

Part I contains an explanation of the amendments of the law. The primary purpose of the publication is to inform lawyers and activists alike about the new laws to enable them to use the provisions for the benefit of the women for whom they are intended. With this end in mind, the critical comments have been made separately, so that the reader is not in doubt about the actual provisions of the law as distinguished from our own critical comments on the law. We have also included in Part I, an explanation of the Marriage Laws Amendment Bill 1981 which sought to introduce "irretrievable breakdown of marriage" as a ground for divorce. The Bill was never passed. We include it as we are of the opinion that the Bill must be passed into law as soon as possible. Many women hesitate to seek a divorce as it would involve the trauma of having to relive a painful tragedy in the hostile atmosphere of a courtroom. This Bill will obviate such a necessity, while at the same time, safeguarding the economic interests of a divorced wife.

In Part II, we have reproduced the full texts of the Criminal (Law Amendment Act) 1983, Criminal Law (Second Amendment Act) 1983, the Dowry Prohibition Act 1961 as amended by the Dowry Prohibition (Amendment Act) 1984 and the Family Courts Act 1984.

We hope this publication will advance legal literacy among women activists enabling them to know their rights and obtain better access to the law.

PART - I

THE CRIMINAL LAW (AMENDMENT) ACT, 1983

The Criminal law (Amendment Act) of 1983, amends The Indian Penal Code, The Code of Criminal Procedure and the Indian Evidence Act, in so far as they concern the law relating to rape. The following are the salient features of the Act:-

(1) Disclosure of identity of the victim:

A new section i.e. 228A has been added to the Indian Penal Code. By this section, the printing or publishing of the name or any matter which may make known the identity of any person who is the victim of the offence of rape is punishable with imprisonment for a term] which may extend to two years and with fine.

However, such printing or publishing is permissible if (a) it is under an order in writing of the Officer in charge of a Police Station investigating into the offence, or (b) with the authorisation in writing of the victim, (c) if the victim is dead or a minor, with the authorisation of the next of kin. The next of kin can only authorise a recognised welfare institution.

This clause also prohibits the publication of proceedings before a court except with the previous permission of the court. Publication without such previous permission is punishable with imprisonment for a term of 3 years. The publication of judgments of the High Court and Supreme Court do not amount to an offence.

The offence is made cognizable and bailable.

Comment:

Section 228A imposes virtual censorship on the press. It will inhibit the social exposure of the offence of rape. It can provide a protective umbrella to the rapist. Any printed matter reporting on a rape will undoubtedly make known the identity of the victim even though the victim may not be named in the report or published material. A description of the location where the offence took place e.g. at the work place, or in a factory, or in a police sta-

tion can obviously lead to the identification of the victim, even if not named. Similarly, a description of a report giving details of the rapist and the manner in which the offence was committed, can also lead to the identity of the victim becoming known. Such reports or publication can become punishable as offences. Demonstration of women's organisations in local areas and communities, against the rapist, intended to mobilise support for the victim, will also have the same effect of making the identity of the victim known. A very common problem that arises in dealing with the offence of rape, is the failure or inability of the police or doctors to take timely cognizance of the offence and it often requires the publication of a leaflet, or a handbill, or a report, or a demonstration to compel the law enforcement agencies to act. All such activities will now be criminalised, by the new section. The section, perhaps motivated by desire to protect the victim of rape against undesirable social consequences, will have precisely the opposite effect. It would have been sufficient to provide that the name of the victim should not be published.

Definition of rape:

(2) Introduction of new Sections for Sec. 375 & 376

The offence of rape has been defined as being sexual intercourse with a woman under any of the six following descriptions:

First - Against her will.

Secondly - Without her consent.

Thirdly - With her consent, when obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband and her consent is given because she believes that he is her husband.

Fifthly - With her consent when she is incapable of giving consent because of unsoundness of mind or intoxication.

Sixthly - With or without her consent, when she is under sixteen years of age.

Sexual intercourse by a man with his wife (the wife not being under fifteen years of age) is not rape.

Note:

The only change made by the amendment, is in stating that sexual intercourse with consent, when such consent is obtained

by putting any person in whom she is interested in fear of death or hurt is rape. Formally if the consent was obtained by putting the woman herself in fear of death or hurt, the offence of rape is committed. Now putting a woman in fear that a person in whom she is interested may be killed or hurt if she does not consent is also rape.

Section 376:

The minimum punishment for rape is seven years and the maximum life imprisonment. The Judge may impose a sentence of less than seven years for reasons to be mentioned in the judgment. Rape by a Police Officer within the limits of the police station to which he is appointed or in the precincts of a police station, on a woman in his custody, or by a public servant who takes advantage of his official position and commits rape on a woman in his custody or by any person in the management or staff of a jail, remand home or other place of custody on an inmate, or by any person in the management of a hospital or by any person on a pregnant woman or on a woman under twelve years of age or gang rape is punishable with a minimum sentence of imprisonment of ten years. The offence is cognizable and non-bailable.

This section lays down the minimum sentence which is to be imposed for the offence of rape. Such a provision did not exist in the pre-amended law and the question what sentence to impose was left to the discretion of the Judge.

Section 376A:

Sexual intercourse by a man with his wife who is living separately from him under a decree of separation or **under any custom or usage** without her consent is punishable with imprisonment which may extend to two years.

The offence is cognizable and bailable.

Note

The definition of rape makes it clear that sexual intercourse by a man with his wife even though forcible and without consent, is not rape. In other words, as the law stood a man cannot be guilty of raping his wife, under any circumstances. This is on the assumption that by the very fact of marriage, the wife consents to sexual intercourse. It is also tied to the notion, that the

women was considered the property of the man and he could do with her as he wished.

Several Womens Organisations had demanded that forcible sexual intercourse by a man with his own wife should also be defined as a offence of rape. The law makers have chosen not to make such forcible intercourse by a man with his own wife an offence but has introduced this new section, which makes forcible intercourse by a man with a judicially separated wife an offence. This new section is a small step forward in the direction of recognising the rights of the wife not to be raped by her husband. A husband who has forcible sexual intercourse with a judicially separated wife will be guilty of rape. So also a husband who has forcible sexual intercourse with a wife who is separated by custom or usage. It is not clear what situations this latter case will cover. For example, it is possible to argue that a husband who has forcible sexual intercourse with a wife from whom he has been separated by mutual agreement will be guilty of rape. However, it remains to be seen how the courts will interpret the words separated by "custom or usage".

Section 376B

A public servant who induces or seduces a woman in his custody, to have sexual intercourse with him, such intercourse not amounting to rape, is punishable with imprisonment which may extend upto five years. The offence is cognizable (but no arrest can be made without a warrant) and bailable.

Section 376C

Sexual intercourse by a Superintendent or the Manager of the Jail, Remand Home or other places of custody who seduces or induces any female inmate, such intercourse not amounting to rape is punishable with a term of imprisonment to the extent of five years. The offence is cognizable (but no arrest can be made without a warrant) and bailable.

Section 376D

Sexual intercourse by any member of the management or staff of a hospital, with any woman in the hospital, taking advantage of his position, such sexual intercourse not amounting to the offence of rape, is punishable with imprisonment for a term which may extend to five years.

The offence is cognizable (but no arrest can be made without a warrant) and bailable.

Note

This is a new group of sections viz. 376B, 376C and 376D. They have been introduced in view of the large number of cases that have come to light of rape of women in "custodial" situation. Police Officers who hold women in custody, Superintendents or officers of Jails and Doctors in Hospitals are obviously in a dominant position qua the women who they hold in custody in their official capacity. Rape of such women in custodial situations has become an increasingly common phenomenon. When such persons seduce or induce women in their custody to have sexual intercourse with them, **even when such intercourse does not amount to rape**, they are punishable. This means that it is not necessary to prove lack of consent, it is sufficient to show that the woman was seduced or induced to have intercourse. This is because the public servant, or Superintendent of Hospital is obviously in a position of power vis-a-vis the woman he holds in his custody and no woman, in such a situation, is willingly expected to have sexual intercourse. These group of Sections make important new innovations in the law. Their utility however, will depend on the interpretation of the words "seduces or induces". In all such situations, charges must be brought both under section 376 and under 376B, 376C or 376D as the case may be, so that even if rape cannot be proved, the other offences can be. It is meaningless to make these new offences cognizable without giving to investigating officers, the power to arrest without a warrant. In the period between the first information of the offence being lodged and the obtaining of the warrant, much of the evidence can be destroyed, especially so, since the offender is a public servant and in a position to have access to incriminating evidence.

(3) Section 114A added to the Indian Evidence Act

In a prosecution for rape under Section 376 (2), clause (a), (b), (c), (d), (e), and (g), where sexual intercourse by the accused is proved, and the question is whether it was without the consent of the woman and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

NOTE

This section applies only to the following cases:

(1) A Police Officer who commits rape within the limits of the police station to which he is appointed.

(2) A Police Officer who commits rape within any police station.

(3) A Police Officer who commits rape on a woman in his custody or on a woman in the custody of an Officer subordinate to him.

(4) A public servant who takes advantage of his position and commits rape on a woman in his custody.

(5) A person in the management or on the staff of a jail, remand home or other place of custody, or a person in the management or staff of a women's home, who takes advantage of his official position and commits rape on the inmate.

(6) A person who, being on the management or staff of a hospital commits rape on a woman in that hospital.

(7) A person who commits rape on a woman knowing her to be pregnant.

(8) A person who commits gang rape.

After the prosecution has led evidence to prove the sexual intercourse by the accused with the victim, and the victim gives evidence that she did not consent, then the court shall presume that she did not consent. The introduction of this section has led to criticism that it makes an alteration in one of the basic principles of criminal law viz. the presumption of innocence which operates in favour of the accused. Such criticism is misconceived. The presumption of innocence remains unaltered. It is only after the sexual intercourse is proved, and the woman steps into the witness box and states that she did not consent and subjects herself to cross-examination, that the burden of proof having been

discharged by the prosecution, shifts to the accused under this section. In these circumstances, the accused will have to establish that the woman did consent. Moreover, this amendment in the law applies only to 'custodial' situation where the rapist, by reason of his official position, not only occupies a position of trust, but also holds the woman in his physical custody by authority of law.

There is no reason why the provisions of the section should be confined to the cases mentioned above. It should be made applicable to all cases of rape. Given the nature of the offence, the dominant position of the man over the woman and the impossibility of proving lack of consent except by stating that she did not consent, the section should apply to all cases of rape.

CRIMINAL LAW (SECOND AMENDMENT)

ACT OF 1983

Criminal Law (Second Amendment) Act of 1983 passed by the Rajya Sabha on 12th December 1983 and Lok Sabha on 21st December 1983 assented to by the President on 25th December 1983 - Act No. 46 of 1983.

That Act makes certain very important amendments concerning women to the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

Section 498A - Cruelty by husband or relatives of husband

This section has been introduced in the Indian Penal Code. It states that a husband or any relative of the husband who subjects his wife to cruelty shall be punished with imprisonment for a term upto three years and be liable to fine.

Cruelty has been defined to mean any wilful conduct of such a nature as is likely to drive the women to commit suicide or to cause grave injury to her mental or physical health or harrasment of the women with the intention of making her or any person related to her, meet an unlawful demand for any property or harrasment because of her failure to meet such a demand.

COMMENT

This section creates a totally new offence of cruelty, to a women. There have been several cases of women dying within a few years of their marriage in suspicious and totally unexplicable circumstances. These deaths have come to be known as 'dowry deaths'. The behaviour of the husband and the parents-in-law may be such that it drives the woman to commit suicide and such acts are now covered by the offence of cruelty. Similarly, harrasment with the intention of coercing the woman or her family to give property to the husband and his family, has been made an offence of cruelty. This new section if properly implemented can go a long way in remedying the injustice meted out to women and act deterrent against committing such offences.

Section 174 of Code of Criminal Procedure

A new sub-section has been added which provides that in cases involving suicide by a woman within seven years of her

marriage or in cases which relate to the death of a woman, within seven years of marriage in circumstances which raise a reasonable suspicion that some other person has committed an offence or the case relates to a death within seven years of the marriage, and any relative of the woman has made a request, or if the Police Officer considers it necessary, the Police Officer investigating into a complaint shall order a post-mortem of the dead body to be made.

So far as Bombay is concerned, under the Coroners Act, a post-mortem is in any case to be made in the circumstances mentioned above. This amendment is of relevance to the other parts of the country where the Coroners Act does not apply.

Section 176

By this section the Magistrate is also empowered to hold enquiries into the cause of death of a woman who dies in the circumstances described above.

Section 198A

By this section any court can take cognizance of the offence of cruelty under Section 498A, upon a police report of facts which constitute such an offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or with the leave of the court, by any other person related to her by blood.

COMMENT

The woman who was a victim of cruelty, where she is herself alive, or her relatives in cases where the woman is dead, mentioned in this section can now directly approach the court by a complaint for appropriate action.

The offence under section 498A has been made cognizable if the information is given by the person aggrieved or by any person related by blood or marriage or by any public servant. The offence is non-bailable and punishable with imprisonment for three years and fine.

Amendment to Indian Evidence Act

Section 113A

Where the question is whether suicide committed by a woman is abetted and it is proved that she has committed suicide within seven years of the date of her marriage and further that her husband or such relative had subjected her to cruelty, the court may presume that a suicide had been abetted by the husband or a relative.

COMMENT

This is an important section which will enable the court to convict persons guilty of abetting a woman to commit suicide. The law has at last taken cognizance of the fact that several women have been known to die within very short periods after their marriage. The deaths have occurred in suspicious and abnormal circumstances either by burning or drowning. The husband or his relatives normally contend that it is not a case of homicide but suicide. In such cases, if it is proved that the woman has committed suicide, and she has been subjected to cruelty, the law will presume that her suicide was abetted by her husband.

DOWRY PROHIBITION ACT

The Dowry Prohibition Act was passed in the year 1961. Pursuant to a widespread demand from the Womens Organisation, the Dowry Prohibition (Amendment) Act of 1984 was passed. The Act has been brought into force on 2nd October 1985.

Definition of Dowry in the 1961 Act.

Section 2 defines dowry to mean any property or valuable security given or agreed to be given either directly or indirectly by one party to the marriage to the other or by the parents of either party to the marriage or by any other person to either party at or before or after the marriage **as consideration for the marriage** but does not include mehr.

The explanation to the Section states that presents made in cash, ornaments or clothes are not deemed to be dowry, unless made in consideration of marriage.

Amendments made by the Act of 1984

1) By the Amendment Act of 1984 the words " as consideration for the marriage " have been replaced with " in connection with the marriage".

2) The explanation has been dropped.

Comment

As the 1961 Act stands, in a prosecution for taking dowry, one would not only have to prove that dowry was given, but also that it was given in **consideration of marriage**. This meant that one would have to prove that the husband promised to marry the woman on condition that dowry was given, or in other words, that the dowry was the price paid for the husband's agreeing to marry the wife. Often, the husband or his parents, if prosecuted would very well argue that the dowry was given out of natural love and affection and not in return for the promise to marry. As can well be imagined, it would be impossible to prove that such a promise was extracted from the girl's parents in return for marriage. The law has therefore been amended to say that any payment made "in connection with the marriage" is dowry. The

effect of the amendment is that it will now be easier to prove that dowry was given or taken so long as the payment or gifts were made in connection with marriage.

The amendment may not serve its purpose. It is likely that it would lead to protracted litigation on the meaning of the words "in connection with the marriage". Ingenious lawyers and Judges may spend years in court trying to decide what situation these words are meant to cover. Now that it is generally acknowledged that the Dowry Prohibition Act, 1961 has failed miserably to stamp out the social evil of dowry, it was expected of the law makers to come up with a better definition of dowry. The amendment could have provided that whenever any property was given by the bride or her parents or relatives to the bridegroom, his parents or relatives, it shall be presumed to be dowry.

Since the explanation has been deleted, the definition of dowry no longer distinguishes between property given by one party to another and presents. In other words, the giving and taking of presents in connection with the marriage are covered by the definition of dowry.

Section 3

The **taking or giving of dowry** is a crime punishable with 6 months imprisonment.

COMMENT

We suggest that giving of dowry ought not to be made an offence. This provision inhibits parents of women from coming forward and complaining about the fact that they were compelled to give dowry. The giving of dowry must be discouraged but making of an offence may not be the best way of dealing with the problem.

Amendments of 1984 to Section 3

The punishment for giving or taking dowry is now, minimum six months imprisonment going upto a maximum of two years and fine, which may be upto Rs. 10,000/- or the value of the dowry which ever is more. The section is further amended to provide that it does not apply to **presents given to the bride or to the bridegroom**. Such presents are required to be entered in a list maintained according to the Rules. Further, such presents are

required to be of a customary nature, and their value must not be excessive having regard to the financial status of her parents.

COMMENT

Although Section 2 include presents in the definition of dowry, this section, to a large extent nullifies the effect of that amendment. Presents can still be made in unlimited amounts to the bride. The only safeguards are that they must (a) be made to the bride, (b) be entered in a list, (c) be not excessive having regard to the financial status of the parents. These cannot be said to be safeguards. Gifts such as household goods will obviously be utilised by the family, though stated to be made to the bride. Presents can be accepted without entry in the list. It would be impossible to prove that presents were given when they are deliberately not entered in a list. The failure to impose any upper limit on the value of the presents is even more shocking. The financial status of the girls parents can be a matter of dispute and there is no yardstick for determining what is "excessive". The introduction of this section goes counter to the very object of prohibition of dowry and in fact will perpetuate the giving and demanding of dowry in the form of 'presents'. It may even encourage competition among upper class parents of daughters eligible for marriage, each trying to prove by giving a hefty presents that his "financial status" is greater than that of others. Such things have been known to happen in cities with the marriage receptions, dinners and displays of presents getting more and more lavish and garish.

Section 4

Demanding dowry is an offence. Prosecution under section 4 requires the prior sanction of the Government.

NOTE

In a recent case where a husband was prosecuted for demanding dowry, he contended that the mere demand was not an offence and that it was only when the other party gave dowry or agreed to give dowry, that the demand could be said to be an offence. He contended that the girls' parents had not agreed to give dowry and therefore no offence was committed. The Supreme Court rejected this argument and held that Section 4 was meant to punish **demands** for dowry whether or not the

other party agreed to give the dowry. The court held that the very object and purpose of the Act was to prohibit dowry and that therefore the very demand for dowry was punishable as a crime, regardless of whether or not dowry has been paid pursuant to the demand. See *L.V. Jadav vs Shankarao A Pawar* 1983 (4) SCC 231.

The provisions for obtaining prior sanction of the State Government is unnecessary and leads to much delay. It is also capable of great abuse, as influential or wealthy men can persuade the government not to grant permission.

Amendment to Section 4 by the Act of 1984

(a) The punishment for the offence of demanding dowry is now minimum six months imprisonment going upto a maximum of two years and fine of Rs. 10,000/-

(b) The requirement of taking previous permission of the Government for prosecution has been dropped. It will therefore no longer be necessary to obtain the permission of the State Government to prosecute a husband who demands dowry.

Section 5

Any agreement for the taking or giving of dowry is void.

Section 6

Where any dowry is received by any person other than the woman, it shall be transferred to the woman within one year (reduced to three months by the 1984 amendment), and pending such transfer, it is to be held in trust. If the woman dies before the dowry is transferred, it will go to her heirs. Failure to transfer is punishable with imprisonment for six months (increased to a minimum of six months and maximum of two years by the 1984 amendment) and/or fine upto Rs. 10,000/-.

By the Amendment of 1984, the Judge has been empowered to order the return of the dowry and if the husband or his family fail to do so, impose a fine equal to the value of the property.

Section 7

No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class can try an offence under this Act. No court can take cognizance of any offence except on a complaint made within one year from the date of the offence.

Amendment made by the Act of 1984

Jurisdiction to try offences under the Act has now been conferred on Metropolitan Magistrates or Judicial Magistrates of the First Class (this is only a formal amendment). These courts can now take cognizance of offences either on their own knowledge or on a police report of the facts which constitute such offence or on a complaint by the person aggrieved by the offence or a parent or other relative or by any recognised Welfare Institution or Organisation. A recognised Welfare Institute or Organisation means a social welfare institution or organisation recognised by the Central Government or State Government.

COMMENT

This new section makes two very important changes. Firstly, it removes the period of limitation viz. one year for filing the complaint under the Act. It will now be possible to file complaints even though one or more year has passed since the date when dowry has been given or taken or demanded. Another important change made by the section is that the court is empowered to act on its own knowledge or on a police report or by a complaint made by the woman or her parents or a recognised welfare institution. Both these changes are welcome and of far reaching importance. It is a well-known fact that one of the main reasons why the provisions of the Act have remained a dead letter, was the requirement of obtaining prior sanction from the State Government. Moreover, either the victim or the parents of the victim might be reluctant to come forward to make a complaint for fear of reprisal from the community. Conferring a right to file a complaint on a recognised welfare institution is a big step forward in ensuring that offenders are brought to book.

Section 8

Section 8 as it originally existed under the 1961 Act stated that the offences under the Act were not cognizable, bailable and non-compoundable.

By the amendment made by the 1984 Act, offences under the Act has been made cognizable. However, the offence continues to be bailable.

COMMENT

Making the offence cognizable is also a step forward as the

police can now act in investigating into an alleged offence on receipt of information by any person that an offence under the act has been committed.

GENERAL COMMENTS

The Dôwry Prohibition Act of 1961 is an all India Act and applies to the whole of India except Jammu & Kashmir. However, different States have made their own amendments to the Act. The States of Bihar, West Bengal, Orissa, Himachal Pradesh, Harayana and Punjab have all amended the Act, in its application to their respective States.

THE FAMILY COURTS ACT, 1984

The Act was passed on 14th September 1984. It has not yet been brought into force. This is an Act which makes provision for the establishment of Family Courts, with the intention of promoting conciliation in disputes relating to marriage and family affairs and to secure speedy settlement of disputes relating to marriage and family affairs.

Section 4

The State Government can appoint as a Judge of a Family Court any person who has held judicial office for at least seven years or the office of a member of a Tribunal or any post in the Government requiring special knowledge of law for seven years or has at least for seven years been an advocate in the High Court or any person who possesses any such other qualification as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.

In selecting the person to be appointed as a Judge, the Government is required to ensure that the person is committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified to promote settlements of disputes by counselling and conciliation. Preference is to be given to women.

COMMENT

The provisions of this section are capable of working injustice against women. It is not quite clear what is meant by saying that the persons appointed as Judges must be "committed to the need to protect and preserve the institution of marriage" and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling. The experience of women in the existing courts has been that the so-called need to protect and preserve the institution of marriage is often enforced by the courts at the expense of the wife. Very often the Judges are reluctant to grant decrees of divorce on the assumption that the institution of marriage needs to be preserved at any cost. It is

generally the wife who is the victim of such enforced preservation of the institution of marriage due to her economic dependence on the husband. Moreover, the welfare of the children being an important criteria to be taken into consideration in settling the disputes, the Judges pressurise the parties to settle the disputes by living together and preserving the institution of marriage. It is rarely appreciated that though the welfare of the children is paramount, the equally important need of protecting the women against mental and physical cruelty cannot be sacrificed at the altar of the institution of marriage and welfare of the children. It is one thing to promote the settlement of disputes relating to maintenance, property of the parties and custody of the children and it is quite another to compel the parties to live together in the interest of preserving the institution of marriage. If this section is to be properly implemented, the Judges who are appointed must ensure that they do not perpetuate injustice in the name of preserving the marriage and settling disputes.

The section further provides that in appointing Judges, preference should be given to women. It is not quite clear why the legislation has chosen to give preference to women for being appointed as Judges to Family Courts. The presumption seems to be that women are better qualified to deal with matrimonial disputes and that they will be in a better position to appreciate the problems of women. However, this takes us back to the basic question *v. z.* what is in the best interest of the women, whether to continue with a bad marriage or whether to bring it to a painless and swift end. The Judge who is appointed, whether man or woman, is primarily required to be sensitive to the oppression of women within the frame work of marriage and respond to the needs of a changing society by recognising that the institution of marriage is not a sacrament and need not be preserved at the cost of injustice to the women. Women judges who will attempt to preserve the institution of marriage at the cost to preserving the marriage, will not necessarily serve the purpose of the Act and will do more harm than good to the victim wife. Another misconception popularly held in society, and even amongst the legal profession, is that women lawyers are only suited for family disputes. We hope that

this section is not introduced on this misconceived basis. Whilst we welcome this provision, we would like to strike a note of caution that women Judges appointed under this Act should ensure that their commitment is to remedy injustice and oppression and not preserve the institution of marriage per se.

Section 5

This section provides for the association of Institutions and Organisations of persons engaged in social welfare with the functioning of the Family Courts.

COMMENT:

The Institution, Organisation or person is required to be recognised by the State Government in consultation with the High Court; but it is not known what is the criteria for recognition. Since the Rules have not yet been framed under the Act, one has to wait and see what criteria for recognition will be laid down in the Rules. Different Institutions and Organisations engaged in social welfare have diverse social values and this can lead to some amount of confusion.

Section 6:

The State Government is required in consultation with the High Court to fix the number and category of counsellors to assist the family courts in the discharge of its function.

Section 7:

This is one of the most important sections of the Act. It provides that all suits and proceedings between the parties to the marriage for a decree of nullity, restitution of conjugal rights, judicial separation or divorce, suits for declaration of the validity of marriage, suits or proceedings between parties **with respect of the property of the parties or either of them**, suits or proceedings for an order and injunction **in circumstances arising out of the marriage relationship**, suits for declaration of legitimacy, suits for maintenance, suits for guardianship, custody or access will be decided by Family Courts.

COMMENTS:

This section confers certain important powers on the Court. It has the merit of combining in one Court, the power of resolving disputes between parties to the marriage relating to any of the matters mentioned above. One of the most important matters on

which the Court can now adjudicate are disputes relating to property or parties and or either of them. Suits for injunctions in circumstances arising out of marital relations, can also be filed. Unfortunately, this section does not go far enough. It would have been better if the section clarified the rights of women to the property of the husband acquired during the marriage. One of the most important drawbacks of family legislation, as it exists today, is that it does not confer upon the wife, the right to a share in the property of the husband. A very valuable opportunity of conferring such a right has been lost. The only advantage of this new section is that it will not be necessary for a wife to file a separate suit other than a suit for matrimonial relief to claim proprietary rights either of her own or to the property of her husband. Such claims can be made in the suit for divorce, judicial separation or restitution of conjugal rights itself. The section will enable judges hearing family matters to make an appropriate order safeguarding the property of the women. Another important change that could have been made was to confer the power on the Courts, to enforce payment of lumpsum alimony and the power to transfer assets to the wife at the time of passing a decree of divorce in lieu of periodic payments of alimony. It is a matter of common experience that orders of maintenance whether interim or final, are difficult to enforce. For a husband to avoid payment of alimony is the easiest thing in the world. The Act could have empowered the Court to attach the property or salary of the husband before judgment and to direct that maintenance should be deducted directly from the salary of the husband and paid over to the wife. Payment of maintenance or alimony could be made a charge on the assets of the husband. Any alienation of the assets of the husband after the petition for maintenance or alimony is filed by the wife, should not be permitted, except with the leave of the Court and any such alienation made without permission should be declared void. In such suits, along with the written statements, the husband must disclose his income and such disclosure must be supported by tax returns or employer's certificate stating his salary or net income. Jurisdiction to entertain suits must be conferred on courts where the wife, at the time of filing of the Petition, resides. This is necessary

because often the husband turns the woman out of the house and she has to come back and reside in her village or city. If such city happens to be different from the place where the marriage was performed or where the parties last resided, she cannot file a suit in such city. Power to grant injunctions must also be used for preventing the husband from entering the place of residence in cases of domestic violence. The courts must also be empowered to prevent the disposal of property by the husband to defeat the claims of the wife.

Section 9:

By this section the court is expected to assist and persuade the parties to arrive at settlements.

COMMENTS

Whilst settlements are obviously welcome and must be preferred in matters relating to family disputes – our comment in relation to this section is the same viz settlements cannot be at the cost of compelling an unwilling wife to stay with her husband. A note of caution needs to be added to the procedure of bringing about the settlements. Experience has shown that very often the settlement is sought to be arrived at or the wife is stated to have consented to the same, but it is found that such settlements were brought about by pressurising the women. Often such pressure is brought to bear on the wife by her own relatives. To prevent miscarriage of justice in such cases, it is essential to have a properly defined procedure for recording settlements, such as (1) the woman's statement that the settlement is acceptable to her should be recorded by the Court and verified by the Judge. The Judge should explain the implications of the settlement to her and inquire whether she has understood the implications of the settlement and has accepted it willingly.

COMMENTS:

Once again, whilst this provision is welcome as it means easy access to information of vital nature, the overall control must at all times be with the Judge and he or she must take independent decisions and not rely entirely on the information.

Section 13:

By this section no party has a right to be represented by a lawyer and may do so only with the leave of the Court.

Section 14:

This section provides that the Court may receive as evidence any report or statement or document or information which may assist in effectively dealing with the dispute whether or not it is admissible under the Indian Evidence Act.

COMMENT:

This section is also welcome. However, if any party demands that the person who has given information or any document must be subjected to cross-examination, such right must be allowed.

Section 15:

This section provides that evidence need not be given at length but the Judge shall record a memorandum of the substance of what the witness said and obtain the signature of the witness on the said summary.

Section 16:

This section provides that evidence could be taken on affidavit but that on an application by the other party the person giving the affidavit could be summoned and cross-examined.

COMMENTS:

The provisions of section 15 are **dangerous**. There is no reason why the full text of the evidence given by a witness should not be recorded verbatim. Decrees of the court are subject to appeal and it is essential that the appeal court should have access to the full text of the evidence of the parties before the Family Court. In fact, we go one step further and suggest that proceedings of the Court must be tape recorded and transcribed. Experience has shown that recording a memorandum of the substance of the evidence only, could lead to the essence of the evidence being lost. Very often, words are put in the mouth of the witness or important passages missed out, leading to grave miscarriage of justice.

Section 19: Appeals

An appeal lies to the High Court from a final order of the Family Court but not from an interim order. No appeal lies from a decree or order passed by consent.

COMMENTS:

Interim orders are of great importance as they deal with matters of custody and maintenance as well as ouster injunctions and there is no reason why they should not be appealable. The requirement of appealing to the High Court can work injustice to women who cannot travel long distances and incur heavy expenses to file such appeals. There is no reason why the appeal should not lie to the District Courts, to cut down on expenses and delays.

MARRIAGE LAWS (AMENDMENT) BILL, 1981:

The 71st Law Commission Report, submitted in 1978, recommended the introduction of "irretrievable break down of marriage" as a ground for divorce. The Bill was introduced in Parliament in February 1981. It was referred to a Joint Committee of the Lok Sabha and Rajya Sabha in September 1981. The Committee submitted its report in November 1983 recommending that the Bill should not be passed into law until a system of Family Courts is set up. One member N.K. Shejwalkar dissented, recommending that there was no reason to delay and that the time was right to enact the law. With the dissolution of the Lok Sabha, the Bill automatically lapsed.

Section 13C to be added to Hindu Marriage Act:

Either party can ask for divorce on the ground that the marriage has irretrievably broken down, after the parties to the marriage have lived apart for a continuous period of not less than three years. In calculating the period during which the parties have lived apart, no account is to be taken of any one period of three months during which they lived together.

A husband and wife will be treated as living apart, unless they are living in the same household.

COMMENT:

The law insists that the parties must live in separate households for a continuous period of 3 years. This requirement will work hardship against the women. She will be unable to take advantage of this provision, even though the marriage has broken down. A woman may be living separately from her husband, even though physically in the same household. It should be enough to show that there have been no conjugal relations between husband and wife for a continuous period of 3 years, even though they may be living physically under the same roof. It would, in many cases, be impossible for a woman to set up separate residence, even though the marriage has broken down, as she may have nowhere else to go.

Section 13D

Where the husband petitions for divorce against his wife on the ground that the marriage has irretrievably broken down, the wife can oppose the grant of the divorce on the ground that it would cause **grave financial hardship** to her. Where the wife objects to the grant of divorce, the Court could, after examining all the circumstances dismiss the petition, or **stay the proceedings until such time as the husband makes arrangements to eliminate the harship.**

NOTE

This section provides a necessary safeguard against a husband who may want to get out of a marriage easily, leaving his wife and children high and dry. Either he will have to provide for his wife and children before he gets the divorce, or his petition will be thrown out. This section would have been sufficient to set at rest the fears of women that this new law will enable husbands to hastily terminate the marriage without providing for the wife and children. Without understanding this provision, women activists and women's orgainstions have opposed the introduction of this new law. As a result of such unfounded fears expressed by such women, the Joint Committee recommended that the Bill should not be passed at the present time. Surprisingly, the objection of several prominent women has been that divorce leaves a "social stigma" on the women, and therefore, divorce on the ground of irretrievable break down should not be permitted. Such backward-looking attitudes should be fought against and not perpetuated by encouraging their continuation. Women must understand that a borken and limping marriage is far more dangerous to their own interest than a painless and swift divorce. The economic interests of the woman are safeguarded as the husband cannot get a divorce unless he provides for his wife and children. Husbands who cannot get a divorce may and in fact do simply leave a woman or throw her out or start living with another woman. It is therefore no solution to a womans problem to suggest that divorce laws must not be liberalised.

Section 13E

The court shall not pass a decree for divorce on this ground unless satisfied that adequate provision for maintenance of children has been made.

The same changes are proposed in the Special Marriages Act, 1954.

GENERAL COMMENTS:

These amendments are proposed only to the Hindu Law of Marriage and the Special Marriages Act. This ground of divorce will therefore not be available to Christians, Muslims and people from other communities who marry under their personal law or any law other than the Special Marriages Act. The passage of this Bill into law would have been a big step forward for all parties to the marriage. It introduces for the first time into our law the theory that divorce can be obtained without having to prove "fault" by either party. All existing grounds of divorce namely cruelty-mental or physical, desertion, adultery, etc. imply that one party is at fault, leading to the divorce. Necessarily therefore, if the party asking for divorce fails to prove the fault alleged, the divorce will be refused. Anybody familiar with divorce litigation would know that this leads to the most bitter fights in court between husband and wife, each trying to prove that the other is guilty of some grave matrimonial offence. It has the most devastating impact, on not only the two people concerned but more so on the children, who often have to watch their parents fighting like cats and dogs and pull each other apart. The damage done in these proceedings is such that it can ruin the future of the children and leave a life long impact on their psychology. Such proceedings have the most harmful social consequences for women, who are always more vulnerable to easy character assassination, than men. An allegation that the woman is of " loose character " meaning thereby that she is not inhibited in her social relations with the opposite sex, or that she " smokes and drinks " are enough to prejudice judges against her. The introduction of this new law would have meant an end to all these inhuman and uncivilised disputes in court. The Hindu Marriage Act and the Special Marriage Act do provide for divorce by mutual consent, but one party to a marriage can still unreasonably withhold consent even though the marriage has broken down beyond repair, out of sheer vindictiveness towards the other. This new law was therefore an important step in the right direction, as proof of a 3 year separation is sufficient to presume that the marriage has in

fact broken down. To compel an unwilling husband or wife, as the case may be, to live within the prison of a broken marriage would be cruel and inhuman and a serious violation of the liberty and privacy of such person.

The right to the matrimonial home, and joint property

The question of the wife's right to property acquired after marriage, all property used as matrimonial property and to the matrimonial home has not been raised by this law. It is time to demand that the wife has a right to a half share in all such property. Maintenance and alimony by themselves do not adequately compensate a divorced wife. The woman has during the substance of the marriage, put in her time, energy and labour into the building of the home and acquiring of assets at a considerable sacrifice to herself. Her contribution to the progress of the family must be seen as equal to that of the husband even though she may not have been an " earning " member. The time spent in child birth, child rearing and keeping the home going, keep her away from being able to work and earn. If we are really concerned about improving the position of women, the only way is to strengthen their economic position & encourage their participation in the work force. If the marriage breaks down, she must have an equal share in the matrimonial home and all property acquired after the marriage.

PART - II
CRIMINAL LAW (AMENDMENT)
ACT, 1983.

(ACT No. 43 of 1983)*

(25th December, 1983)

An Act further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

Be it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:-

1. Short title.

Insertion of new Section 228A.-

This Act may be called THE CRIMINAL LAW (AMENDMENT) ACT, 1983

2. Disclosure of identity of the victim of certain offences, etc.- In the Indian Penal Code (hereinafter referred to as the Penal Code), after Section 228, the following section shall be inserted, namely:-

228A. (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under Section 376, Section 376A, Section 376B, Section 376C or S. 376D is alleged or found to have been committed (hereinafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.—The printing or publication of the judgement of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”

3. Substitution of new sections for Sections 375 and 376.—In the Penal Code, for the heading “of rape” occurring immediately before Section 375 and for Sections 375 and 376, the following heading and sections shall be substituted, namely:—

‘Sexual offences’

375. Rape.— A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. Punishment for rape.— (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped in his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) Within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(c) commits rape on a woman knowing her to be pregnant; or

(f) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—“woman’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widow’s home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.—“hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

376A. Intercourse by a man with his wife during separation.—

Whoever has sexual intercourse with his own wife, who is living separately from him under a decree of separation or under any custom or usage without her consent shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

376B. Intercourse by public servant with woman in his custody.—Whoever, being a public servant, takes advantage of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a

term which may extend to five years and shall also be liable to fine.

376C. Intercourse by superintendent of Jail, remand home, etc.—Whoever, being the superintendent or manager of a jail, remand home or other place or custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.—“Superintendent” in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 2.—The expression “women's or children's institution” shall have the same meaning as in Explanation to sub-section (2) of Section 376.

376D. Intercourse by any member of the management or staff of a hospital with any woman in that hospital.—Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.—The expression “hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of Section 376.

4. Amendment of Section 327.—In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Criminal Procedure Code), Section 327 shall be remembered as sub-section (1) of that section and after it, as so renumbered, the following sub-sections shall be inserted, namely:—

(2) Notwithstanding anything contained in sub-section (1) the inquiry into and trial of rape or an offence under Section 376.,

Section 376A, Section 376B, Section 376C or Section 376D of the Indian Penal Code shall be conducted in camera:

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any proceedings, except with the previous permission of the court.

5. Amendment of the First Schedule.—In the First Schedule to the Criminal Procedure Code, under the heading “I.—Offences under the Indian Penal Code,”—

(a) after the entries relating to Section 228, the following entries shall be inserted, namely:—

1	2	3	4	5	6
228 A	Disclosure of identity of the victim of certain offences, etc.	Imprisonment for two years and fine.	Cognizable	Bailable	Any Magistrate
	Printing or publication of a proceeding without prior permission of court.	Ditto	Ditto	Ditto	Ditto

(b) for the entries relating to Section 376, the following entries shall be substituted, namely:—

1	2	3	4	5	6
376	Rape	Imprisonment for life or imprisonment for ten years and fine.	Cognizable	non-bailable	Court of Session.
	Intercourse by a man with his wife not being under twelve years of age.	Imprisonment for two years or fine or both.	Non-cognizable	Bailable	Ditto.
376 A	Intercourse by a man with his wife during separation	Imprisonment for two years and fine.	Ditto	Ditto	Ditto.

1	2	3	4	5	6
376B	Intercourse by public servant with woman in his custody.	Imprisonment for five years and fine. and fine	Cognizable (but no arrests shall be made without a warrant or without an order of a Magistrate)	Ditto	Ditto
376C	Intercourse by superintendent of jail, remand home, etc.	Ditto	Ditto	Ditto	Ditto
376D	Intercourse by manager, etc., of a hospital with any woman in that hospital.	Ditto	Ditto	Ditto	Ditto

6. Insertion of new Section 114A.—After section 114 of the Indian Evidence Act, 1872, the following section shall be inserted namely:—

“114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under Clause (a) or Clause (b) or Clause (c) or Clause (d) or Clause (e) or Clause (g) of sub-section (2) of Section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”

CRIMINAL LAW (SECOND AMENDMENT)

ACT, 1983

(No. 46 of 1983)

(25th December, 1983)

An Act further to amend the Indian Penal Code, the Code of Criminal

Procedure, 1973 and the Indian Evidence Act, 1872

Be it enacted by Parliament in the Thirty-fourth Year of the Republic of Indian as follows:—

Prefatory Note—Statement of Objects and Reasons.—The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws.

2. The following are the changes which are proposed to be made:—

- (i) The Indian Penal Code is proposed to be amended to make cruelty to a woman by her husband or any relative of her husband punishable with imprisonment for a term which may extend to three years and also with fine. Wilful conduct of such a nature by the husband or any relative of the husband as is likely to drive the woman to commit suicide or cause grave physical or mental injury to her, and harassment of a woman by her husband or by any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as cruelty. The offence will be cognizable if information relating to the commission of the offence is given to the officer in

charge of a police station by the victim of the offence or a relative of the victim of the offence or, in the absence of any such relative, by any public servant authorised in this behalf by the State Government. It is also being provided that no court shall take cognizance of the offence except upon a police report or a complaint made by the victim of the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or with the leave of the Court, by any other person related to her by blood, marriage or adoption, (vide Clauses 2, 5 and 6 of the Bill).

- (ii) Provision is being made for inquest by Executive Magistrates and for post-mortem in all cases where a woman has, within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other person has committed an offence. Post-mortem is also being provided for in all cases where a married woman has died within seven years of her marriage and a relative of such woman has made a request in this behalf (vide Clauses 3 and 4 of the Bill).
- (iii) The Indian Evidence Act, 1872 is being amended to provide that where a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty, the Court may presume that such suicide had been abetted by her husband or by such relative of her husband (vide Clause 7 of the Bill).

3. The Bill seeks to achieve the above objects.

1. Short title.—This act may be called the Criminal Law (Second Amendment) Act, 1983.

2. Amendment of Act 45 of 1860.—In the Indian Penal Code, after Chapter XX, the following Chapter shall be inserted, namely:—

“CHAPTER XX-A

Of cruelty by husband or relatives of husband

498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be

punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

3. Amendment of Section 174.—In the Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as the Code of Criminal Procedure), in Section 174, in sub-section (3), for the words “When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall”, the following shall be *substituted*, namely:—

“When—

- (i) the case involves suicide by a woman within seven years of her marriage; or
- (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or
- (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or
- (iv) there is any doubt regarding the cause of death; or
- (v) the police officer for any other reason considers it expedient so to do,
he shall”.

4. Amendment of Section 176.—In Section 176 of the Code of Criminal Procedure, in sub-section (1), for the words “When any

person dies while in the custody of the police", the words, brackets and figures "When any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of Section 174" shall be substituted.

5. Insertion of new Section 198-A.—In the Code of Criminal Procedure, after Section 198, the following section shall be inserted, namely:—

"198-A. *Prosecution of offences under Section 498 A of the Indian Penal Code.*— No Court shall take cognizance of an offence punishable under Section 498-A of the Indian Penal Code (45 of 1860), except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption."

6. Amendment of the First Schedule. — In the Code of Criminal Procedure, in the First Schedule, after the entries relating to Section 498, the following entries shall be inserted, namely:—

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what Court triable
1	2	3	4	5	6

"CHAPTER XX-A

Of cruelty by husband or relatives of husband

498A	Punishment for subjecting three a married woman to cruelty.	Imprisonment for three years and fine.	Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her by blood, marriage or adoption or if there is no such relative, by any public servant belonging to such class of category as may be notified by the State Government in this behalf.	Non-bailable	Magistrate of the first class "
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7. Amendment of Act 1 of 1872.—In the Indian Evidence Act, 1872, after Section 113, the following section shall be *inserted*, namely:—

“113-A. *Presumption as to abetment of suicide by a married woman.*—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860).”

THE DOWRY PROHIBITION ACT, 1961

(Act No. 28 of 1961)

(20th May, 1961)

An Act to prohibit the giving or taking of dowry

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. Short title, extend and commencement.—(1) This Act may be called the Dowry Prohibition Act, 1961.

(2) It extends to the whole of India except the state of Jammu and Kashmir.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Definition of “dowry”.—In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or after the marriage³ (in connection with the marriage of the said parties, but does not include) dower or *mehr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

1. Extended to Pondicherry by Act 26 of 1968, S. 3 & Sch. Pt. I and to Dadra and Nagar Haveli by Regn. 6 of 1963.

State Amendments: Bihar Act IV of 1976; Haryana Act 38 of 1976, H.P. Acts 25 of 1976 and 39 of 1978; Orissa Act No. I of 1976; Punjab Act 26 of 1976 and W.B. Act No. 35 of 1975.

2. 1st July, 1961, *vide*, Notification No. S.I. 1410, dated 20-6-1961, Gazette of India, Extraordinary, Part II, Section 3(ii), page 1005.

3. Subs. by Act 63 of 1984, S. 2, w.e.f. Oct. 2, 1985.

*Explanation I.*⁴ (* * *)

Explanation II.—The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).

3. Penalty for giving or taking dowry.—⁵(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable⁶ (with imprisonment for a term which shall not be less than six months, but which may extend to two years, and with fine which may extend to ten thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.)

^{6a} (2) Nothing in sub-section (1) shall apply to, or in relation to, -

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.)

4. Omitted by Act 63 of 1984, S. 2, w.e.f. Oct. 2, 1985

5. Ins. by Act 63 of 1984, S. 3, w.e.f. Oct. 2, 1985.

6. Subs. by Act 63 of 1984, S. 3, w.e.f. Oct. 2, 1985.

6a Ins. by Act 63 of 1984, S. 3, w.e.f. Oct 2, 1985.

⁷ **(4. Penalty for demanding dowry.**—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.)

5. Agreement for giving or taking dowry to be void.—Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or her heirs.—(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

- (a) if the dowry was received before marriage, within (three months) after the date of marriage; or
- (b) if the dowry was received at the time of or after the marriage, within ⁸ (three months) after the date of its receipt; or
- (c) if the dowry was received when the woman was a minor, within one year after she has attained the age of eighteen years,

and pending such transfer, shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which may extend to ten thousand rupees or with both.)

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.

⁷ Subs. by Act 63 of 1984, S. 4, w.e.f. Oct. 2, 1985.

⁸ Subs. by Act 63 of 1984, S. 5, w.e.f. Oct. 2, 1985.

(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, her heirs, the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, her heirs within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, her heirs.)

(4) Nothing contained in this section shall affect the provisions of Section 3 or Section 4.

¹⁰ **(7. Cognizance of offences.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;
- (b) no court shall take cognizance of an offence under this Act except upon—
 - (i) its own knowledge or a police report of the facts which constitute such offence, or
 - (ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation;
- (c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation:— For the purposes of this sub-section, “recognized welfare institution or organisation” means a social welfare institution or organisation recognized in this behalf by the Central or State Government.

9. *Ins.* by Act 63 of 1984, S. 5, w.e.f. Oct. 2, 1985.

10. *Subs.* by Act 63 of 1984, S. 6, w.e.f. Oct. 2, 1985.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.)

¹¹[8. Offences to be cognizable for certain purposes and to be bailable and non-compoundable.]—(1) The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offences—

- (a) for the purposes of investigation of such offences; and
- (b) for the purposes of matters other than—
 - (i) matters referred to in Section 42 of that Code; and
 - (ii) the arrest of a person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be bailable and non-compoundable)

9. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

¹² (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the form and manner in which, and the persons by whom, any list of presents referred to in sub-section (2) of Section 3 shall be maintained and all other matters connected therewith; and
- (b) the better co-ordination of policy and action with respect to the administration of this Act.]

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should

11. Subs. by Act 63 of 1984, S. 7, w.e.f. Oct. 2, 1985.

12. Sub-section (2) *renumbered* as sub-section (3) and new sub-section (2) *ins.* by Act 63 of 1984, S. 8, w.e.f. Oct. 2, 1985.

not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. Repeals.—The Andhra Pradesh Dowry Prohibition Act, 1958 (Andhra Pradesh Act 1 of 1958), and the Bihar Dowry Restraint Act, 1950 (Bihar Act 25 of 1950), are hereby repealed.

THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985'

In exercise of the powers conferred by Section 9 of the **Dowry Prohibition Act, 1961** (28 of 1961), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the **Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985**.

(2) They shall come into force on the 2nd day of October, 1985 being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

2. Rules in accordance with which lists of presents are to be maintained.—(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of present referred to in sub-rule (1) or sub-rule

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage;

(b) shall be in writing;

(c) shall contain,—

(i) a brief description of each present;

(ii) the approximate value of the present;

(iii) the name of the person who has given the present;
and

(iv) where the person giving the present is related to the **bride** or bridegroom, a description of such relationship;

(d) shall be signed by both the bride and the bridegroom.

Explanation 1.-Where the bride is unable to sign, she may affix her thumb-impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

Explanation 2.-Where the bridegroom is unable to sign, he may affix his thumb-impression in lieu of his signature after having the list read out to him and obtaining the signature on the list, of the person who has so read out the particulars contained in the list.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub-rule (1) or sub-rule (2) the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of the marriage.

1. *Vide* Noti. No. G.S.R. 664(E), dated August 19, 1985, published in the Gazette of India, Extra., Part II, Section 3(i), dated 19th August, 1985, p.2

THE FAMILY COURTS ACT, 1984

No. 66 of 1984

(14th September, 1984.)

An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

(1) This Act may be called the Family Courts Act, 1984.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States.

2. In this Act, unless the context otherwise requires,—

(a) "Judge" means the Judge or, as the case may be, the Principal Judge, Additional Principal Judge or other Judge of a Family Court;

(b) "notification" means a notification published in the Official Gazette;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Family Court" means a Family Court established under section 3;

(e) all other words and expressions used but not defined in this Act and defined in the Code of Civil

Short
title,
extent
and Com-
mencemen

Defini-
tions.

5 of 1908.

Procedure, 1908 shall have the meanings respectively assigned to them in that Code.

CHAPTER II FAMILY COURTS

3. (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,—

Establish-
ment
of Family
Courts.

(a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

4. (1) The State Government may, with the concurrence of the High Court, appoint one or more persons to be the Judge or Judges of a Family Court.

Appoint-
ment of
Judges

(2) When a Family Court consists of more than one Judge,—

(a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;

(b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;

(c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;

(d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vac-

ancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.

(3) A person shall not be qualified for appointment as a Judge unless he—

(a) has for at least seven years held a judicial office in India or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law; or

(b) has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or

(c) posses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.

(4) In selecting persons for appointment as Judges,—

(a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and

(b) preference shall be given to women.

(5) No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.

(6) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.

5. The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of—

(a) institutions or organisations engaged in social welfare or the representatives thereof;

Associa-
tion of
social
welfare
agencies,
etc

(b) persons professionally engaged in promoting the welfare of the family;

(c) persons working in the field of social welfare; and

(d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

6. (1) The State Government shall, in consultation with the High Court determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.

Counsel-
lors,
officers
and other
em-
ployees
of
Family
Courts.

(2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

CHAPTER III JURISDICTION

7. (1) Subject to the other provisions of this Act, a Family Court shall— Juris-
diction.

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the *Explanation*; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings between

the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody or, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973; and

(b) such other jurisdiction as may be conferred on it 2 of 1974. by any other enactment.

8. Where a Family Court has been established for any area,—

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the *Explanation* to that sub-section;

Exclusion of jurisdiction and pending proceedings.

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973;

2 of 1974.

(c) every suit or proceeding of the nature referred to in the *Explanation* to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973,—

2 of 1974.

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

CHAPTER IV PROCEDURE

9. (1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

Duty of
Family
Court
to make
efforts
for settle-
ment.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

10. (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to the suits and proceedings (other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

Procedure generally.
of 1908.
of 1974.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

of 1974.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one Party and denied by the other.

11. In every suit or proceedings to which this Act applies, the proceedings may be held in *camera* if the Family Court so desires and shall be so held if either party so desires.

Proceedings to be held in *camera*.

12. In every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purposes of assisting the Family Court in discharging the functions imposed by this Act.

Assistance of medical and welfare experts.

13. Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner:

Right to legal representation.

Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

14. A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

Applica-
tion of
Indian
Evidence
Act, 1872.

15. In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

Record of
Oral
evidence.

16 (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit of proceeding before a Family Court.

Evidence
of formal
character
on affida-
vit.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

17 Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

Judgment.

18. (1) A decree or an order (other than an order under Chapter IX of the Code of Criminal Procedure, 1973), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 for the execution of decrees and orders.

Execution
of
decrees
and
orders.

2 of 1974.

5 of 1908.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 shall be

executed in the manner prescribed for the execution of such order by that Code. 2 of 1974.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution.

CHAPTER V

APPEALS

19. (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973 or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Appeal. 5 of 1908. 2 of 1974.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(5) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

CHAPTER VI

MISCELLANEOUS

20. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Act to have overriding effect.

21(1) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

Power of High Court to make rules.

(a) normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;

(b) holding of sittings of Family Courts at places other than their ordinary places of sitting;

(c) efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

22. (1) The Central Government may, with the concurrence of the Chief Justice of India, by notification, make rules prescribing the other qualifications for appointment of a Judge referred to in clause (c) of sub-section (3) of section 4.

Power of the Central Government to make rules.

(2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

23. (1) The State Government may, after consultation with the High Court, by notification, make rules for carrying out the purposes of this Act.

Power of the State Government to make rules.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide for all or any of the following matters, namely:—

(a) the salary or honorarium and other allowances payable to, and the other terms and conditions of Judges under sub-section (6) of section 4;

(b) the terms and conditions of association of counsellors and the terms and conditions of service of the officers and other employees referred to in section 6,

(c) payment of fees and expenses (including travelling expenses) of medical and other experts and other persons referred to in section 12 out of the revenues of the State Government and the scales of such fees and expenses;

(d) payment of fees and expenses to legal practitioners appointed under section 13 as *amicus curiae* out of the revenues of the State Government and the scales of such fees and expenses;

(e) any other matter which is required to be, or may be, prescribed or provided for by rules.

(3) Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

ABOUT THE LAWYERS COLLECTIVE

The Lawyers Collective is an organisation of lawyers and law students which is committed to working for basic changes in the social and political structure of society. We believe that the Indian legal system perpetuates the power of the rich against the poor and keeps the vast millions of our people in conditions of poverty.

The Lawyers Collective is committed to the use of law as an instrument in the service of the people. Towards this end, the Lawyers Collective works to safeguard the rights of workers, peasants, women, dalits and other oppressed minority groups. The Lawyers Collective undertakes all such activity as it considers necessary to meet the unmet legal needs of the people such as legal literacy, legal aid, law reform and public interest litigation.

